

I. Remarks

Respectfully, and generally for the reasons set forth below, the Election/Restriction requirement, and each ground therefor, are traversed for the reasons set forth below. Applicant elects Group I with traverse, Group I corresponding to claims 1-78.

In the Office Action, a Restriction Requirement has been made pursuant to 35 U.S.C. Sec. 121. In paragraph 1 of the Office Action, the Examiner has required restriction/election as between Groups I and II, but in paragraph 2 of the Office Action, the Examiner contends that "Inventions I, II, and III are related as subcombinations disclosed as usable together in a single combination." Paragraph 3 of the Office Action refers to "all these inventions" but is ambiguous as to which groups or inventions are being referenced. The restriction/election requirement is improper for contradictory contentions as to the number of groups or inventions, such that Applicant cannot fairly respond. Accordingly, the restriction/election requirement is improper pursuant to 35 USC Sec. 132 and Rule 104, and Applicant requests an interview.

It is further respectfully submitted that the Examiner has not established that the claims cover inventions that are separate and distinct and have separate utility, as required by Sec. 121. In view of the Examiner's contention in paragraph 3 that "subcombination II has separate utility such as relating specifically to the instant messaging between users in a computer network via the internet and not the processes of subcombination I or III" (as best as this is understood), the restriction/election requirement is improper for failing to indicate consideration of linking claims. Reconsideration is respectfully requested.

Again as best as the contentions of the restriction/election requirement can be understood, the requirement is improper for noncompliance with MPEP Sec. 806.05(d), which states:

"Care must be taken to determine if the subcombinations are generically claimed. Where subcombinations as disclosed and claimed are both (a) species under a claimed genus and (b) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice

applicable to related inventions. If restriction is improper under either practice, it should not be required."

The requirement fails to show the determination required in MPEP Sec. 806.05(d), and reconsideration is requested.

Again as best as the contentions of the restriction/election requirement can be understood, the requirement is improper for lacking a sufficient showing that there would be a serious burden if restriction were not required. There is no indication in the Office Action that the examination and searches will not be in more than one class/subclass, which Applicant believes should not be the case, precluding the separate classification, status, or field of search contended in the Office Action with respect to "all of these inventions." Additionally, pursuant to Rule 104 and 35 U.S.C. Sec 132, the requirement based on separate class/subclasses fails to provide any "information" regarding propriety of the classification, and this information is required. Absent evidence, the requirement is improper. Reconsideration is requested.

Yet again as best as the contentions of the restriction/election requirement can be understood, the requirement is improper because there is no evidence to support the Examiner's contention of a "serious burden" in the requirement, especially in view of the copied claims and the "substantially the same subject matter" element of 35 USC Sec. 135(b). The instant case includes claims copied from US Patent No. 6,549,937. Respectfully, an Examiner's contention of a serious burden does not necessarily make the contention true as a matter of fact, and Applicant disputes the contention. The contention being a fact alleged by the Examiner, in view of Rule 104 and Sec. 132, evidence is required (e.g., by declaration or affidavit). Absent evidence, the requirement is improper. Reconsideration is requested.

Still again, as best as the contentions of the restriction/election requirement can be understood, the requirement is improper because, while restriction criteria from the MPEP are set forth on page 3 of the Office Action, there is no indication in that any of them are applicable to the

instant case, or in what manner, and to what group(s). The requirement is therefore improper under 35 USC Sec. 132, Rule 104, and the MPEP for failing to provide sufficient "information." Reconsideration is again requested.

However, with respect to the restriction/election requirement, the fundamental problem is that it is inconsistent with respect to the groups / inventions, and impropriety flows to all the issues raised herein. Applicant requests that the restriction/election requirement be withdrawn, but otherwise, be reconsidered and reissued. An interview is again respectfully requested.

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

APPLICANT CLAIMS LARGE ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below

Respectfully submitted,



Peter K. Trzyna
(Reg. No. 32,601)
(Customer No. 28710)

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P.O. Box 7131
Chicago, Illinois 60680-7131
(312) 240-0824